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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,403	12/16/2004	Gert Johannes van Taak Nieuwoudt	83339	7404
22242 7590 06/06/2007 FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			EXAMINER GELLNER, JEFFREY L.	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 06/06/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/505,403

Applicant(s)

NIEUWOUDT, GERT JOHANNES  
VAN TAAK

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 21-35 is/are pending in the application.
- 4a) Of the above claim(s) 21-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Acknowledgement is made of Applicant's IDS received 19 August 2004.

#### ***Election/Restrictions***

Applicant's election without traverse of Group II (claims 28-35) in the reply filed on 16 April 2007 is acknowledged. Claims 21-27 are withdrawn because they are drawn to the non-elected invention.

#### ***Claim Objections***

Claim 28, 29, are objected to because of the following informality:

In claim 28, the elements of "ground cover" of lines 4 and 5 should probably be "membrane strip" so as to conform with the language of lines 2 and 6.

In claim 29 the language of "tentacle anchoring formations" is unclear because the "tentacle anchoring formations" are not a "ply" but the "tentacle plant anchor" is a "ply."

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 28-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 28, the language of "water-impervious membrane strip" of line 2 appears to contradict the language of "through apertures" of line 6 because a membrane strip with apertures can not be water impervious.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8 32-34  
Claims 28-30 and are rejected under 35 U.S.C. 103(a) as being unpatentable over Rast Jr. (US 4,357,884) in view of Demuth (US 3,511,032).

As to claim 28, Rast Jr. discloses a method of improving harvest yield (from col. 2 lines 41-45) for tentacle plants ("tomatoes, . . . watermelons, cantalopes" of col. 2 lines 63-66) by providing a water-impervious membrane strip ("black polyethylene plastic sheeting" of col. 2 lines 66-68) comprising laying a ground cover on a strip of ground ("plastic sheeting is applied" at col. 3 lines 1-15); securing the ground cover to the ground (from "buried in the soil at the edges of the row" of col. 3 lines 1-15); planting tentacle plants or their seed through apertures in the membrane strip (from "plant seedling being introduced into each hole" of col. 3 lines 1-15 and Fig. 3) so that tentacle plants growing through the apertures can anchor themselves to the

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tentacles anchoring formations on top of the membrane strip (from Fig. 4). Not disclosed is ground cover with a tentacle plant anchor. Demuth, however, discloses a tentacle plant anchor (14 of Figs. 1-4). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Rast Jr. by laying the tentacle plant anchor on a ground cover as disclosed by Demuth so as to provide a means of harvesting the crop (see Fig. 4 of Demuth).

As to claim 29, the limitations of claim 28 are disclosed as described above. Not disclosed is unrolling the membrane strip and tentacle plant anchor as plys of a roll. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Rast Jr. as modified by Demuth by rolling both out as plys of a roll so as to reduce needed labor.

As to claim 30, the limitations of claim 28 are disclosed as described above. Rast Jr. further discloses securing the ground cover with longitudinally extending zones next to extending edges of the ground cover to the ground (from "buried in the soil at the edges of the row" of col. 3 lines 1-15). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Rast Jr. as modified by Demuth by burying the edges of the tentacle plant anchor so that it does not change position during the growing season.

As to claim 32, Rast Jr. discloses a method of improving harvest yield (from col. 2 lines 41-45) for tentacle plants ("tomatoes, . . . watermelons, cantalopes" of col. 2 lines 63-66) by providing tentacle anchoring formations comprising laying a membrane strip of a synthetic material on a strip of ground ("plastic sheeting is applied" at col. 3 lines 1-15); securing the

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ground cover to the ground (from “buried in the soil at the edges of the row” of col. 3 lines 1-15); planting tentacle plants or their seed through apertures in the membrane strip (from “plant seedling being introduced into each hole” of col. 3 lines 1-15 and Fig. 3) so that tentacle plants growing through the apertures can anchor themselves to the tentacles anchoring formations on top of the membrane strip (from Fig. 4). Not disclosed is laying tentacle anchoring formations on the upper side of the membrane strip. Demuth, however, discloses laying a tentacle anchoring formation (14 of Figs. 1-4). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Rast Jr. by laying the tentacle anchoring formation on a ground cover as disclosed by Demuth so as to provide a means of harvesting the crop (see Fig. 4 of Demuth).

As to claim 33, the limitations of claim 32 are disclosed as described above. Not disclosed is unrolling the membrane strip and tentacle anchoring formations as plys of a roll. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Rast Jr. as modified by Demuth by rolling both out as plys of a roll so as to reduce needed labor.

As to claim 34, the limitations of claim 32 are disclosed as described above. Rast Jr. further discloses securing the membrane strip with longitudinally extending zones next to extending edges of the ground cover to the ground (from “buried in the soil at the edges of the row” of col. 3 lines 1-15). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Rast Jr. as modified by Demuth by burying the edges of the tentacle anchor formations so that it does not change position during the growing season.

Claims 31 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rast Jr. (US 4,357,884) in view of Demuth (US 3,511,032) in further view of Audineau et al. (EP 0465327 A2).

As to claim 31, the limitations of claim 28 are disclosed as described above. Not disclosed is providing a tunnel over the anchor and cover. Audineau et al., however, discloses providing a tunnel ( of Fig. 1) with a sheet of ground cover (2 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Rast Jr. as modified by Demuth by providing a tunnel as disclosed by Audineau et al. so as to protect the crop from frost or sunscald.

As to claim 35, the limitations of claim 32 are disclosed as described above. Not disclosed is providing a tunnel over the formations and cover. Audineau et al., however, discloses providing a tunnel ( of Fig. 1) with a membrane strip (2 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Rast Jr. as modified by Demuth by providing a tunnel as disclosed by Audineau et al. so as to protect the crop from frost or sunscald.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brown, Neveu et al., Miyachi, and Simmons disclose in the prior art various ground covers for seedlings. Bohannon Jr. and Romanek et al. disclose in the prior art various ground covers with anchoring means.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner  
Primary Examiner  
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